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IN THE
COURT OF APPEALS OF INDIANA

RONNIE L. WEST II,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 18A05-0711-CR-612
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Richard A. Dailey, Judge
Cause No. 18C02-0509-FB-22

June 5, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Ronnie L. West II appeals the sentence imposed by the trial court after his plea of guilty to one count of battery by means of a deadly weapon, a class C felony.

We affirm.

ISSUES

1. Whether the trial court abused its discretion when it ordered West to serve a six-year sentence.

2. Whether the sentence imposed is inappropriate.

FACTS

On August 27, 2005, Terry Wayne Miller II was at Scoobies Lounge. After an altercation began inside the bar, Miller ran outside to the parking lot. There, West was in his van, and Miller approached it. Miller "tried to kick the door" of West's van "shut because [West's] arm was behind the door and [Miller] was afraid he had a weapon." (Tr. 9). West thrust at Miller with a knife, cutting the back of Miller's hand when he tried to block the motion, and West proceeded to stab Miller once in the stomach and once in the lower chest area. Miller sustained injuries that required significant medical treatment.

On September 2, 2005, the State charged West with one count of aggravated battery, a class B felony, and one count of battery by means of a deadly weapon, a class C felony. On August 21, 2007, West signed and tendered to the trial court a plea agreement whereby he would plead guilty to battery by means of a deadly weapon, a class C felony, and the State would dismiss the aggravated battery charge. The

agreement provided that sentencing was "left to the discretion" of the trial court. (App. 153). At the change-of-plea hearing on August 21, 2007, Miller testified to the above facts; the trial court found "a factual basis for" West's guilty plea and ordered a pre-sentence investigation report ("PSI"). (Tr. 15).

The trial court held a further hearing on October 15, 2007, and accepted West's guilty plea. Thereafter, West affirmed the accuracy of the PSI, and West's wife testified that she and their five-year-old son relied on West for support. Mrs. West also confirmed that during the period since his September 2005 arrest on the charges arising from the incident at Scoobies Lounge, West had been arrested twice and had been convicted of various misdemeanor offenses.

In pronouncing sentence, the trial court found as an aggravating circumstance West's "history of adult criminal activity." (App. 167). Specifically, it noted West's "twelve prior misdemeanor convictions and one prior felony conviction." (Tr. 47). It found as a second aggravating circumstance that West had "recently violated the conditions of bond granted under the instant cause of action." (App. 167). In this regard, the trial court stated that West had been "placed on bond in this cause and released on bond on September 10, 2005"; and that on "September 19, 2006, he was arrested and charged with a count of Failure to Stop After an Accident Resulting in Damage to an Unattended Vehicle, a Class B Misdemeanor, and Driving While Suspended, a Class A Misdemeanor, and False Informing, Class B misdemeanor." (Tr. 47). Further, on May 11, 2007, West "was charged with a count of Driving While License Suspended, a Class A Misdemeanor, and . . . another count of Failure to Stop After An Accident Resulting in

Vehicle Damage, Class B Misdemeanor." *Id.* The trial court found these instances reflected that West "ignor[ed]" the condition of his bond "that he behave well and not violate the law." *Id.*

Thereafter, the trial court found that West had "some family backing and support," and that "his imprisonment will result in hardship to his dependent," (Tr. 48), facts identified as mitigating circumstances in the sentencing order. (App. 168). The trial court then ordered West to serve a sentence "of six (6) years executed." *Id.*

DECISION

1. Abuse of Discretion

West first argues that the trial court abused its discretion when it failed to find two mitigating circumstances: his guilty plea, and his addiction to methadone. We disagree.

In *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), our Supreme Court reiterated that sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for abuse of discretion. So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion. *Id.* The trial court must enter a sentencing statement when imposing sentence for a felony offense. *Id.* That statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence, including any findings of mitigating or aggravating circumstances which it finds "significant." *Id.* It would be an abuse of the trial court's discretion to enter

> a sentencing statement that explains reasons for imposing a sentence – including a finding of aggravating and mitigating factors if any – but the record does not support the reasons, or the sentencing statement omits

> reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law.

Id.

At the sentencing hearing, West did not "advance[] for consideration" by the trial court as a mitigating circumstance either the fact of his having pleaded guilty or his methadone addiction. *Id.* Therefore, pursuant to *Anglemyer*, it would not be an abuse of discretion for the trial court to not find these to be significant mitigating circumstances. Further, West pleaded guilty to the class C felony offense in exchange for the State's dismissal of the class B felony offense charged. Our Supreme Court has held that when the defendant's plea is in exchange for the State's dismissal of a more serious criminal charge, the defendant has received a benefit for that plea "adequate to permit the trial court to conclude that [his guilty] plea did not constitute a significant mitigating factor." *Sensback v. State*, 720 N.E.2d 1160, 1164 (Ind. 1999). As to West's claim that his addiction to methadone should have been considered, the PSI reflects his admission to having been addicted for seven years but not having had taken any action to address it until two weeks before the sentencing. We do not find that the trial court abused its discretion when it failed to find West's methadone addiction to be a significant mitigating circumstance.

West also argues that the trial court committed error when it failed to "articulate its evaluation and balancing" of the aggravating and mitigating circumstances at sentencing. West's Br. at 7. *Anglemyer* held that "the trial court no longer has any obligation to 'weigh' aggravating and mitigating factors against each other." 868 N.E.2d

at 491. Thus, "once the trial court has entered a sentencing statement," it may impose any sentence authorized by statute and permissible under the Indiana Constitution. *Id.* Hence, this argument also must fail.

2. Inappropriate Sentence

With no citation to authority, West also argues that "his six-year sentence is inappropriate in light of the nature of the offense," asserting that if Miller "had stayed away from [West's] van, he would never have been hurt," and therefore must "share[] the blame for his injuries." West's Br. at 7, 8. We are not persuaded.

We have the authority to revise a sentence if, "after due consideration of the trial court's decision," it is found that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). The burden is on the defendant to persuade the reviewing court that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

By statute, the advisory sentence for a class C felony is four years, with a possible enhancement for a total term of eight years. The trial court imposed a sentence mid-way between the advisory and the maximum. Miller testified that he had been unarmed and did absolutely nothing to provoke West to attack him. Yet West acted to inflict two serious stab wounds on Miller with a knife, as well as to cut Miller's hand. Further, the record reflects that West had an extensive criminal history, and his previous convictions had not deterred his utter disregard for the commands of the law. We do not find that the sentence imposed by the trial court is inappropriate to the nature of the offense and West's character.

Affirmed.

NAJAM, J., and BROWN, J., concur.